

**SB189 – Clarifying laws covering disposition of fines and settlements** (Sen. Joe Balyeat)

Legislative Audit Committee issue – bipartisan co-sponsors because there was bi-partisan concern during the audit committee hearing.

Look at the audit report of the AG's office.

EXHIBIT 1  
DATE 3-23-05  
SB 189

- 1) Need definition of excess funds.
- 2) Need time frame.

AG's response: Disagreed, thought he should get to distribute the money rather than have it go back to the General Fund for the Legislature to distribute. AG said it was "settlement", not fines, costs, or fees; and he appointed an advisory council to provide him with the cover necessary to distribute the money, rather than return it to the General Fund where it'd be subject to the legislature's appropriation process.

Problems with AG's interpretation:

- 1) date problem (M. Tropila).
- 2) AG's resolution directly contradicts his rationale.
- 3) Audit report says his own staff thought the money was subject to the reversion requirements of 30-14-143 and 30-14-226.
- 4) I don't believe there is any statutory authority for this advisory council.

In what some have described as an 11<sup>th</sup> hour move before leaving office, the AG distributed in excess of \$1.5 million in public funds to private organizations of his choosing, I'm distributing the list. The question is not whether these are deserving entities. They may well be. But the question is whether the AG, or any other public official should be able to dish out millions of dollars without authorization by the legislature, and without benefit of the appropriations process.

So in addition to the two needs dictated in the audit report, the AG's response necessitates the 3<sup>rd</sup> item which this bill addresses --- all this money should be subject to the legislative appropriation process, regardless of whether it's called fines, costs, fees, or settlement.

SB189 addresses all three issues. Senate Judiciary Committee adopted an amendment which Sen. Laslovich and I put together. The senate judiciary hearing on this bill was interesting. The AG's office abandoned the arguments used at the Leg. Audit Committee, and instead took an entirely new angle to justify what was done. Their new argument is that it's OK for them to keep and distribute the money rather than have it revert to the general fund because it's not "excess". That paying all this money out to these private organizations is part of their mission, and they want to amend the bill significantly to statutorily justify what they did. That argument doesn't hold any water for several reasons: First, if their argument were true, they wouldn't need this huge amendment they suggesting to conform the statute to what they did. Secondly, even if these disbursements were legitimate, there would still need to be spending authority given in their legislatively approved budget; and there was, of course, no such spending authority given or even requested. So Senate Judiciary rejected the AG's amendment outright and I would urge this committee to strongly resist the amendment as well. Whether or not these private organizations are deserving of money is not the question. Even if they're deserving -- it's the legislature's job to appropriate and distribute funds; that authority is not within the AG's purview. ,

I'll sit for any proponent & , opponents, and answer your questions, and then tell you why all the opponents are wrong in my closing.

## Chapter III – Disclosure Issue

### Consumer Protection Office

Two state laws related to the Office of Consumer Protection (OCP) (sections 30-14-143, MCA, and section 30-14-226, MCA) have identical language that state “All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.” Nothing in either law describes when or how often a transfer to the General Fund should occur or a definition of excess funds.

Since the OCP moved to the department at the beginning of fiscal year 2006, the state special revenue account balance has grown due mainly to increased settlement funds received. The ending fund balance recorded on the accounting records for the account are as follows:

June 30, 2006	\$420,012
June 30, 2007	\$1,859,455
June 30, 2008	\$2,367,280

A strict interpretation of these laws is that any revenue received that exceeds the operating costs of the office at the end of each state fiscal year should be transferred to the General Fund. Under that scenario, approximately \$2.3 million would have been transferred to the General Fund for fiscal years 2006 through 2008. This interpretation would not leave the office with any cash to pay for operating costs, so the department would have to request loans each year to pay operating expenses until sufficient revenue was received.

However, the department has not made any transfers to the General Fund in the three fiscal years it has had the office. Department personnel stated they are taking a very liberal interpretation of the law. In some documentation we reviewed, department officials indicated they would like to have a two-year operating budget reserve of \$1.3 million in the OCP fund that would provide the office operating stability in the event settlement dollars decline. Under this scenario, excess funds of \$1,067,280 should have been transferred to the General Fund for the year's fiscal years 2006 through 2008.

Since state law does not provide any requirements on the timing of the transfer to the General Fund or what is considered excess, we make no recommendations to the department at this time. We are disclosing this issue for informational purposes only.

## CONSUMER SETTLEMENT ADVISORY COUNCIL STATEMENT OF STANDARD OPERATING PROCEDURE

WHEREAS, the Office of Consumer Protection receives settlement awards as a result of litigation or investigations brought on behalf of Montana consumers under the Consumer Protection Act; and

WHEREAS, the settlement agreement often requires distribution of funds for the purpose of consumer education, public benefit or consumer protection, or provides for funds to be distributed to local entities or organizations working to benefit consumers in the applicable field; and

WHEREAS, it is desirable to create and maintain a council to identify and recommend appropriate organizations or entities for the receipt of consumer settlement funds;

NOW, THEREFORE, I, Mike McGrath, Attorney General of the State of Montana, by the authority vested in me by Mont. Code Ann. § 2-15-122, do hereby establish the Consumer Settlement Advisory Council.

### I. DEFINITIONS

The following words have the following meanings:

A. "Council" means the Consumer Settlement Advisory Council.

B. "Consumer Benefit Funds" means fines, costs, or fees awarded to the Office of Consumer Protection as the result of consumer litigation in an amount greater than the expenses of the Office, including the two year operating expense reserve maintained by the Office.

C. "Department" means the Department of Justice.

### II. STATEMENT OF PURPOSE

The purpose of the Council is to assist the Attorney General in determining what non-profit, governmental, or other community organization should receive Consumer Benefit Funds in accordance with either the terms of the applicable settlement agreement or the type of consumer harmed by the unfair and deceptive practice.

### III. DUTIES OF COUNCIL

*per AG - mistake*

A. The Council shall:

1. have quarterly meetings;
2. establish a form that allows organizations to apply for funding, requiring submittal of a proposed budget, as well as an explanation of how the money will be used and what type of consumer will be served, which will be placed on the Department's website;
3. establish a form that allows the Department and the public to recommend organizations or entities for receipt of funding, which will be placed on the Department's website;
4. issue requests for funding proposals to appropriate organizations or entities, if necessary;
5. review submitted fund proposals for connection to consumer protection, education or advocacy, or for connection to the type of consumer harmed by the unfair and deceptive practice, as directed by the settlement agreement, as well as for budgetary and service concerns outlined in (2) above;
6. recommend one or more organizations or entities for the receipt of Consumer Benefit Funds, while ensuring that the total recommended amount of funding does not exceed the Office of Consumer Protection's projected operating expenses and the two year reserve maintained by the Office;
7. ensure that the project as implemented is consistent with the project as proposed and funded, including oversight and monitoring if necessary.

B. The Attorney General shall review the Council's recommendation(s) and make the final decision.

IV. COMPOSITION

The Council shall consist of five members, including two employees of the Department and three members of the public. The members shall be appointed by and serve at the pleasure of the Attorney General. The names and addresses of the Council members have been submitted to the Secretary of State and the Office of the Governor in a separate filed record, and are attached to this Statement.

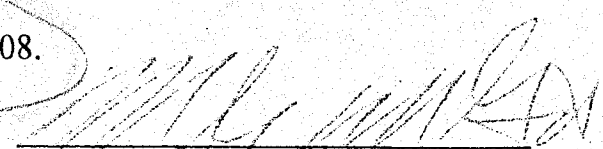
V. COMPENSATION

Council members eligible for compensation under Mont. Code Ann. § 2-15-122(5) (all members except "full-time salaried officer[s] or employee[s] of this state or any political subdivision of this state") shall be compensated by the Department in an amount not to exceed \$50 for each day in which the member is actually and necessarily engaged in the performance of Council duties. All members shall be reimbursed for travel expenses pursuant to Mont. Code Ann. § 2-15-122(5).

V. DURATION

The Council shall exist for two years from the effective date of this Statement.

Effective this 10<sup>th</sup> day of July, 2008.

  
MIKE McGRATH, Attorney General

## **Consumer Settlement Advisory Council**

### **Council Members**

Bill Thomas, Legislator  
1200 Adobe Drive  
Great Falls, MT 59404  
406-761-8013 (h)

Pam Bucy, Attorney  
Luxan & Murfitt  
24 W 6<sup>th</sup> Ave  
Helena, MT 59601

Tara Veazey, Executive Director  
Montana Budget and Policy Institute  
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Matthew Dale, Director  
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406-444-1907 (w)

Ali Bovingdon, Assistant Attorney General  
Attorney General's Office  
PO Box 201401  
Helena, MT 59620-2501  
406-444-9734 (w)

## CONSUMER SETTLEMENT ADVISORY COUNCIL STATEMENT OF STANDARD OPERATING PROCEDURE

WHEREAS, the Office of Consumer Protection receives settlement awards as a result of litigation or investigations brought on behalf of Montana consumers under the Consumer Protection Act; and

WHEREAS, the settlement agreement often requires distribution of funds for the purpose of consumer education, public benefit or consumer protection, or provides for funds to be distributed to local entities or organizations working to benefit consumers in the applicable field; and

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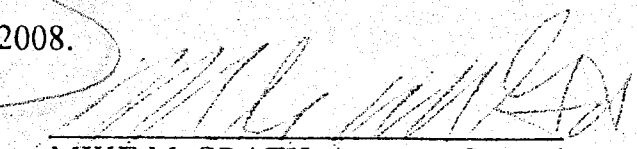


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V. DURATION

The Council shall exist for two years from the effective date of this Statement.

Effective this 10 day of July, 2008.

  
MIKE McGRATH, Attorney General

## **Consumer Settlement Advisory Council**

### **Council Members**

Bill Thomas, Legislator  
1200 Adobe Drive  
Great Falls, MT 59404  
406-761-8013 (h)

Pam Bucy, Attorney  
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**CSAC Proposals**  
**December 3, 2008**  
**Schedule A**

		CSAC		Notes
		Requested Amount	Recommended Amount	
1	American Cancer Society - Pain Initiative	\$ 453,365.63	\$ 67,000.00	Pain Management Conference
2	American Lung Association of Mountain Pacific	\$ 58,300.00	\$ -	Protect Clean Indoor Air Act and Educate MT to Ease Implementation - Lobbyist
3	American Lung Association of Mountain Pacific	\$ 48,950.00	\$ 48,950.00	Protect Children from 2nd Hand Tobacco Smoke
4	American Lung Association of Mountain Pacific	\$ 88,000.00	\$ -	Freedom from Smoking Project
5	A.W.A.R.E., Inc.	\$ 50,000.00	\$ -	Increase Medical and Mental Health availability to child victims
6	Bridger Clinic, Inc.	\$ 52,000.00	\$ 52,000.00	Family planning - low income consumers - Budget shortfall amount
7	Cancer Family Network of Montana	\$ 15,900.00	\$ 19,850.00	Celebrating Family \$15,900 additional for program expense (not on cover amt)
8	Great Falls Community Food Bank	\$ 20,000.00	\$ 20,000.00	Purchase additional 40,000 lbs of food
9	Lewis & Clark City-County Health Department	\$ 50,780.00	\$ 50,780.00	Immunization software program
10	Lewis & Clark City-County Health Department	\$ 45,412.96	\$ 45,412.96	Youth suicide program
11	Montana Assoc. for the Blind	\$ 200,000.00	\$ 50,000.00	Summer newly blind orientation (benefits 25-30 per year) - Recommended 1 year
12	Montana Food Bank Network, Inc.	\$ 75,000.00	\$ 75,000.00	Back pack program
13	Montana Food Bank Network, Inc.	\$ 75,000.00	\$ 75,000.00	Mobile Pantry
14	Montana Food Bank Network, Inc.	\$ 100,000.00	\$ 100,000.00	Freezer / Cooler
15	Montana Mental Health Association	\$ 50,000.00	\$ -	Virtual Drop In Center

	NARAL Pro-Choice Montana					
16	Foundation	\$	22,190.88	\$	-	Reproductive health, birth control, & sex education
17	Susan G. Komen for the Cure	\$	50,000.00	\$	50,000.00	Mammograms to uninsured and underinsured women
18	Weel	\$	57,360.00	\$	57,360.00	Healthcare Coordinator
	Montanans for Fair & Responsible					
19	Lending	\$	62,500.00	\$	-	Research & collect data - coordinator

### New Proposals

20	Ashland Community Health Center	\$	20,000.00	\$	75,000.00	Generator, van, rx's, exam tables, etc...
	Butte Silver Bow Primary Health					
21	Care, Inc.	\$	30,000.00	\$	30,000.00	Medications to patients who would otherwise go without
22	Helena Food Share, Inc.	\$	10,250.00	\$	10,250.00	8 foot cooler, condenser. Transported and installed
23	Helena Indian Alliance	\$	6,500.00	\$	6,500.00	Food for seniors & indigent. Medical supplies & rx's
24	Missoula Food Bank, Inc.	\$	20,000.00	\$	20,000.00	Insurance for new refrigerated trucks for 1 year
25	Montana Family Advocacy Program	\$	14,000.00	\$	14,000.00	Combines law & medicine to assist vulnerable families
26	Partnership Health Center	\$	50,000.00	\$	50,000.00	Remodel pharmacy to expand by 40%
						1 FTE Eligibility Case Manager, to assist folks in applying for available benefits
27	River Stone Health	\$	99,162.00	\$	50,000.00	
28	Sweet Medical Center, Inc.	\$	10,000.00	\$	10,000.00	Prescription Assistance to uninsured and underinsured.
29	Community Health Partners	\$	2,500.00	\$	2,500.00	
30	Crime Victim Compensation				**	Amount to be determined
	<b>Requesting Proposals - 2nd time</b>					
	Community Health Care Center - GTF					Budget up to \$10,000
	Custer Cnty Community Health Ctr.					
	Miles City					Budget up to \$10,000

Glacier Community Health Center -			Budget up to \$10,000
Cut Bank			Budget up to \$10,000
Indian Health Board of Billings, Inc.			Budget up to \$10,000
Lincoln County Community Health			Budget up to \$10,000
Ctr. - Libby			Budget up to \$10,000
Marias Healthcare Services			Budget up to \$10,000

Total \$1,837,171.47 \$ 979,602.96

CSAC Amount \$1,557,448.89  
Proposed Grants \$ 979,602.96  
Remaining \$ 577,845.93

**CSAC Proposals**  
**12/3/2008**  
**Schedule B**

Year	Proposal #		Requested		Final Award		Notes
			Amount		Amount		
2008	1	American Cancer Society - Pain Initiative	\$ 453,365.63	\$	67,000.00		Pain management conference
2008	2	American Lung Association of Mountain Pacific	\$ 58,300.00	\$	-		Protect Clean Indoor Air Act and Educate MT to Ease Implementation - Lobbyist
2008	3	American Lung Association of Mountain Pacific	\$ 48,950.00	\$	48,950.00		Protect Children from 2nd Hand Tobacco Smoke
2008	4	American Lung Association of Mountain Pacific	\$ 88,000.00	\$	-		Freedom from Smoking Project
2008	5	A.W.A.R.E., Inc.	\$ 50,000.00	\$	-		Increase Medical and Mental Health availability to child victims
2008	6	Bridger Clinic, Inc.	\$ 52,000.00	\$	52,000.00		Family planning - low income consumers - Budget shortfall amount
2008	7	Cancer Family Network of Montana	\$ 15,900.00	\$	15,900.00		Celebrating Family \$15,900 additional for program expense (not on cover amt)
2008	8	Great Falls Community Food Bank	\$ 20,000.00	\$	20,000.00		Purchase additional 40,000 lbs of food
2008	9	Lewis & Clark City-County Health Department	\$ 50,780.00	\$	50,780.00		Immunization software program
2008	10	Lewis & Clark City-County Health Department	\$ 45,412.96	\$	45,412.96		Youth suicide program
2008	11	Montana Assoc. for the Blind	\$ 200,000.00	\$	50,000.00		Summer newly blind orientation (benefits 25-30 per year) - 1 year funding
2008	12	Montana Food Bank Network, Inc.	\$ 75,000.00	\$	75,000.00		Back pack program
2008	13	Montana Food Bank Network, Inc.	\$ 75,000.00	\$	75,000.00		Mobile Pantry
2008	14	Montana Food Bank Network, Inc.	\$ 100,000.00	\$	100,000.00		Freezer / Cooler
2008	15	Montana Mental Health Association	\$ 50,000.00	\$	-		Virtual Drop In Center
2008	16	NARAL Pro-Choice Montana Foundation	\$ 22,190.88	\$	-		Reproductive health, birth control, & sex education
2008	17	Susan G. Komen for the Cure	\$ 50,000.00	\$	50,000.00		Mammograms to uninsured and underinsured women

2008	18	Weel	\$ 57,360.00	\$ 30,000.00	Healthcare Coordinator
2008	19	Montanans for Fair & Responsible Lending	\$ 62,500.00	\$ -	Research & collect data - coordinator
2008	20	Ashland Community Health Center	\$ 20,000.00	\$ 75,000.00	Generator, van, rx's, exam tables, etc...
2008	21	Butte Silver Bow Primary Health Care, Inc.	\$ 30,000.00	\$ 30,000.00	Medications to patients who would otherwise go without
2008	22	Helena Food Share, Inc.	\$ 10,250.00	\$ 10,250.00	8 foot cooler, condenser. Transported and installed
2008	23	Helena Indian Alliance	\$ 6,500.00	\$ 10,000.00	Food for seniors & indigent. Medical supplies & rx's
2008	24	Missoula Food Bank, Inc.	\$ 20,000.00	\$ 20,000.00	Insurance for new refrigerated trucks for 1 year
2008	25	Montana Family Advocacy Program	\$ 14,000.00	\$ 14,000.00	Combines law & medicine to assist vulnerable families
2008	26	Partnership Health Center	\$ 50,000.00	\$ 50,000.00	Remodel pharmacy to expand by 40%
2008	27	River Stone Health	\$ 99,162.00	\$ 50,000.00	1 FTE Eligibility Case Manager, to assist folks in applying for available benefits
2008	28	Sweet Medical Center, Inc.	\$ 10,000.00	\$ 10,000.00	Prescription Assistance to uninsured and underinsured.
2008	29	Community Health Partners	\$ 2,500.00	\$ 10,000.00	
2008	30	Crime Victim Compensation	\$ 538,155.93	\$ 538,155.93	
		<b>Requesting Proposals - 2nd time</b>			
2008	40	Community Health Care Center - GTF	\$ 10,000.00	\$ 10,000.00	
2008	41	Custer Cnty Community Health Ctr. Miles City	\$ 10,000.00	\$ 10,000.00	
2008	42	Glacier Community Health Center - Cut Bank	\$ 10,000.00	\$ 10,000.00	
2008	43	Indian Health Board of Billings, Inc.	\$ 10,000.00	\$ 10,000.00	
2008	44	Lincoln County Community Health Ctr. - Libby	\$ 10,000.00	\$ 10,000.00	
2008	45	Marias Healthcare Services	\$ 10,000.00	\$ 10,000.00	

Total \$2,435,327.40 \$ 1,557,448.89

CSAC Amount  
Proposed Grants  
Remaining

\$1,557,448.89  
\$1,557,448.89  
\$ -

12/31/2008

Schedule B  
Final Approved Amount